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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 WAYNE SEMINOFF,

11 Plaintiff,

12 v.

13 SUNG HONG, a/k/a LAWRENCE HONG, and  
14 YOUNG HONG, a married couple; HYU HONG,  
15 a single woman; and H & H GROUP, INC., a  
Washington corporation,

16 Defendants.  
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CASE NO. C06-149RSM

ORDER ON MOTION FOR  
SUMMARY JUDGMENT

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19 This matter is before the Court for consideration of defendant Hyu Hong's motion for summary  
20 judgment. Dkt. # 56. Defendant asserts that she is entitled to summary judgment because plaintiff did  
21 not timely respond to her discovery requests. In opposition, plaintiff asserts that the parties agreed to  
22 hold discovery in abeyance pending efforts to settle the matter, but that his responses have now been  
23 provided. Defendant has not filed a reply to contradict plaintiff's representations.

24 Summary judgment should be rendered only "if the pleadings, discovery and disclosure material  
25 on file, and any affidavits show there is no genuine issue as to any material fact and that the movant is  
26 entitled to a judgment as a matter of law." F.R.Civ.P. 56(c). Defendant has filed no affidavits, exhibits,  
27 or other evidence to demonstrate the absence of any factual issues. The motion cannot be treated as one  
28 for summary judgment. Instead, it is a premature motion for sanctions for failure to comply with

1 discovery requests. F.R.Civ.P. 37(b)(2)(A). The motion is premature because defendant never moved to  
2 compel the responses, so no Court order is in place. *Id.* The sanction of dismissal is available only for  
3 failure to comply with a Court order. F.R.Civ.P. 37(b)(2)(A)(v). Further, it appears that plaintiff has now  
4 provided his responses. Defendant Hyo Hong's motion for summary judgment of dismissal is  
5 accordingly DENIED.

6 DATED this 21 Day of April 2009.

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8 RICARDO S. MARTINEZ  
9 UNITED STATES DISTRICT JUDGE  
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